**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2216 OF 1990.**

1. Smt. Shantibai Vithal Saswade, Occupation Kasar Business. ]

2. Dattatraya Vithal Saswade Occupation service. ]

Both residing at 728, Raviwar Peth, Pune 411 002. ] ..Petitioners (Orig. Defts.)

Versus

Smt. Yamunabai Purshottam Waikar Since deceased by her heirs- ]

1. Waman Keshav Yevalekar, Occupation -Goldsmit, residing at 173, Kasba peth, Pune- 411 001. ]

2. Jagnnath Madhav Pavtekar (W.P. stands dismissed on 23/2/98) ]

3. Digambar Pandurang Pavtekar, Occupation-Goldsmith residing at 822, Raviwar Peth, Pune-411 002. ] ..Respondents (orig. Defts)

Mr. Aniket Aher Sawant h/f Mr. A.V. Anturkar for the petitioner.

Mrs. Suhasini Mutalik for the respondent Nos.1 to 3.

**CORAM: ANOOP V. MOHTA, J.**

**DATED: 8TH JULY, 2005**

**ORAL JUDGMENT. :**

1. The petitioners-tenants have invoked Article 227 of the Constitution of India and prayed to set aside the impugned Judgment and order dated 6/4/1990 passed by the Vth Additional District Judge, Pune, in Appeal No.119/87, whereby, respondents-landlords' appeal has been allowed and directed the petitioners to vacate the tenanted premises.

2. By the Judgment and order dated 29th November, 1986, a suit for possession filed by the respondents landlords against the petitioners-tenants was dismissed on all grounds, i.e. default, unauthorised permanent structure, bonafide need, hardship, nuisance and arrears of rent. However the appellate court has granted the decree of possession on the ground of default only. Respondents-landlords have not challenged the said order on the other grounds.

3. Heard the learned Counsel for the respondents Mrs. Suhasini Mutalik. No argument was advanced by the Counsel for the petitioner, as praecipe for withdrawal of appearance dated 20th March, 2002, has not yet been

considered by the office. The same is still pending. Now at the time of hearing, statement was made that they have no instructions as brief and papers were already delivered and returned to the concerned parties. The present Writ Petition is pending since 1990. At the stage of final hearing now, I am not inclined to adjourn the matter on this ground. Petitioner should have taken appropriate steps for withdrawal of power by this time, as the praecipe has been on the record since 20th March, 2002. Therefore, proceeded with the matter in the interest of justice as it was adjourned twice earlier also.

4. The Lower appellate Court, while granting the decree for possession, observed as under:

> "As against this, I am ready to appropriate Rs.45.80 which was deposited in excess by the respondents in that M.A. In the other words, I am ready to give a set of Rs.45.80 to the respondents. Now if one excludes amount of Rs.45.80, the remaining amount comes to Rs.2.20. it means that, the landlady was not in receipt of the full amount of rent of six months from the respondents when they were being served with a demand notice. An amount of Rs.2.20 was remained in balance towards the respondents. From the aforesaid discussion it could not be said that the respondents were not in arrears of rent of more than 6 month when they were served with a demand notice. The respondents had failed to deposit an amount of Rs.2.20. At the same time, they had failed to file an application for the determination of the standard rent. The

> standard rent was not determined at the time when the respondents were served with a demand notice. There was a demand on behalf of the respondents regarding the fixation of the standard rent as it can be revealed from the M.A.No.281/76. It means there was a dispute regarding the monthly rent between the respondents and appellants."

5. In view of the above reasoning, it cannot be said the petitioner-tenants are in arrears of rent for more than 6 months. The findings of the appellate Court in para 17 supports the tenants case that they were not in arrears of rent for more than 6 months. Only because the respondent-tenant failed to deposit an amount of Rs. 2.20, as observed in above para, it is difficult to grant the decree of possession on this ground.

6. The trial Judge, observed that the petitioner-tenants had replied the demand notice dated 16/11/1982 on 6/12/1982. An application No. 281/76 for fixation of rent was pending prior to the demand notice itself. The respondents-tenants was depositing the rent in the Court. Therefore, as against the demand till 6/10/1982, the petitioners-tenants had deposited rent of Rs. 927/- in the said proceeding. Therefore, rent was deposited in excess. In this background, I am inclined to observed that petitioners-tenants can not be said to

be defaulters, unready and unwilling to pay the rent to the respondent-landlord.

7. For the above reasons, the impugned judgment dated 6/4/1990 is set aside and the Judgment and order dated 29/11/1986 is restored. The Writ Petition is allowed. Rule made absolute. No order as to cost.

**[ANOOP V. MOHTA, J.]**

[srpasha@hc]